



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/148325

PRELIMINARY RECITALS

Pursuant to a petition filed March 27, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability now known as the Office of the Inspector General (OIG) in regard to Medical Assistance (MA), a hearing was held on April 25, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the OIG correctly determined the amount of Personal Care Worker (PCW) hours under petitioner's prior authorization requests (# [REDACTED]) and (# [REDACTED]).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By written submittal: Kelly Townsend, RN
Office of the Inspector General
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County who receives MA. She is 43 years old and diagnosed with morbid obesity, chronic pain, urinary incontinence and asthma.

2. On January 3, 2013, Independence First submitted a prior authorization (PA) request for PCW services under PA # [REDACTED]. The request was for 28 PCW hours weekly, and 7 hours weekly for PCW travel time to begin on March 1, 2013.
3. On March 13, 2013 the OIG denied that PA request finding the PCW services were not shown to be medically necessary. Exhibit 3.
4. On March 14, 2013, Independence First submitted a new prior authorization (PA) request for reconsideration of PCW services under PA # [REDACTED]. The request was again for 28 PCW hours weekly, and 7 hours weekly for PCW travel time to begin on March 1, 2013.
5. On May 15, 2013 the OIG issued a summary update to petitioner after the instant hearing and after the second PA request # [REDACTED]. In that summary letter, the OIG indicated that it was authorizing 19 hours of PCW services effective March 1, 2013 to June 20, 2013. This allowed 210 minutes weekly for bathing, 140 minutes weekly for dressing, 210 minutes for grooming, 140 minutes weekly for toileting, 210 minutes per week for incontinence cares, and 228 minutes weekly for services incidental to tasks.
6. Petitioner lives with her spouse and son and does not regularly attend activities outside her home.
7. The most current Personal Care Screening Tool (PCST) with a completion date of January 16, 2013, used to determine petitioner's PCW hours showed that:
 - a. She requires partial assistance with bathing, grooming, and dressing her upper body daily.
 - b. She requires total assistance daily with dressing her lower body.
 - c. She feeds herself with daily intermittent supervision or cueing.
 - d. She is able to move about herself but requires intermittent supervision or cueing.
 - e. She is able to transfer herself but requires intermittent supervision or cueing.
 - f. She needs assistance with toileting 4 times daily.
 - g. She needs assistance with incontinence care 2 times daily.
 - h. She is independent with her medication administration.
 - i. She has passive range of motion performed twice daily 7 days per week.
 - j. She does not have seizures, and does not engage in behaviors that complicate PCW tasks.

DISCUSSION

MA coverage of PCW services is described in the Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Examples of covered services are assistance with bathing, with getting in and out of bed, with mobility and ambulating, with dressing and undressing, and meal preparation. In determining the number of PCW hours to authorize the OIG uses that standard along with the general medical necessity standard found at Wis. Adm. Code, §DHS 101.03(96m). It provides:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;

2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

To determine the number of PCW hours to authorize the OIG uses the Personal Care Screening Tool (PCST), a computer program it believes will allow it to consistently determine the number of hours required by each recipient. See ForwardHealth Update No. 2009-08. The PCST allots a specific amount of time in each area the recipient requires help, which the OIG's reviewer can then adjust to account for variables missing from the screening tool's calculations.

The problem with petitioner's case largely stems from the Screening Tools as filled out by the provider, along with the medical or clinical evidence submitted. In reviewing the information submitted by the provider, I can see how the OIG was unable to determine that the PCW services were medically necessary, and technically I am reviewing the OIG's determination. I add that I am reviewing the OIG's denial made on March 13, 2013 which the petitioner then appealed. Petitioner indicated that she also wanted to appeal the May 15 determination that she would be allowed 19 hours of PCW services. The OIG also requested in that May 15 letter that I consider that decision as it ultimately modified the original denial. In making this decision I note that the petitioner likely requires some PCW services, however, I must base my decision on the law and the evidence before me. I suggest that the petitioner, her provider, and the medical specialists she sees review her PCW needs and that they provide increased documentation to support a new request for additional ongoing PCW time.

I also add that the OIG did request additional documentation from the provider to support the prior authorization, but the information submitted still does not explain the conflicting documentation. There was also much back and forth post-hearing between the provider and the OIG regarding the documentation and the conflict of information. For example, the provider testified at hearing that petitioner cannot transfer by herself, yet the PCST states that she is independent in transfers, but then the addendum states that she cannot transfer due to poor balance, pain and limited range of motion. The recent physical therapy evaluation states that her sensorimotor and neuromotor systems were within functional limits and that her balance was within normal limits. The PCST also makes no mention of her use of cane as durable medical equipment, and it was not raised at hearing either. However, petitioner testified that she can get around her home or to her car if she is able to hold on to something. The Pain Management Notes submitted post-hearing state that she uses a wheelchair to get around in the community and a cane to ambulate in her home. A January doctor's note indicates that he has ordered a walker and a toilet seat. Petitioner also testified that she requires a third surgery for her left shoulder/rotator cuff and that her carpal tunnel was still aggravated, but there is no clinical evidence to support that either. The petitioner testified that her PCW needs were real and submitted a timesheet to explain how much time is required for PCW tasks. However, there is still a disconnect between what the

first PCST showed as to her abilities, the addendum, the second PCST, and the doctor's notes, PT evaluations, etc.

I therefore must conclude that the OIG was correct in its order. As in all prior authorization request cases, the petitioner bears the burden of proving the services she requests are necessary, and that has not been done. Independence First can file an amendment to the prior authorization request correcting the problems and explaining more fully the need for the hours based on clinical information. The OIG ultimately allowed 19 hours per week from March 1, 2013 to June 20, 2013 and I will not disturb those determinations.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The OIG correctly determined the amount of Personal Care Worker (PCW) hours under petitioner's prior authorization requests (# [REDACTED]) and (# [REDACTED]).

THEREFORE, it is **ORDERED**

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

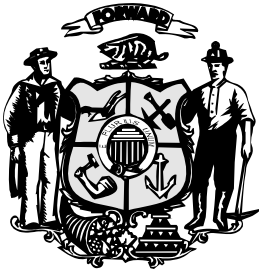
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 4th day of June, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 4, 2013.

Division of Health Care Access And Accountability